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No. 302

In the Supreme Court of the United States

OCTOBER TERM, 1952

CLAIBORNE DAMERON, PETITIONER

v.

A. S. BRODHEAD, MANAGER OF REVENUE AND EX-OFFICIO TREASURER OF THE CITY AND COUNTY OF DENVER

BRIEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF COLORADO

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reserve argument thereon until such time as the matter may come before the Court upon appeal.

5. Hypothetical Case

The petitioner states in his brief that "the decision of the Supreme Court of Colorado would prevent Colorado from taxing the petitioner if he is being taxed by Louisiana, his state of domicile; but if petitioner is taxed by Colorado and is then transferred to another state, the latter could tax him again since Colorado was not his state of domicile." The first part of the statement is an admission that the decision of the Supreme Court of Colorado would prevent double taxation, which we have shown to be the purpose of the act. The second part states a hypothetical case. There is no question of double or multiple taxation in this case because the tangible personal property was in the State of Colorado during the entire year of 1948, and there was no contention that the property had been or could have been taxed by the State of Louisiana. Therefore, the question of whether a serviceman might be subject to double taxation is a purely hypothetical one and this Court should not decide this question in this case. *Champlin Refining Co. v. United States*, 329 U. S. 29.

Even if the objection as to double taxation should be good as to some servicemen under other circumstances, the petitioner is not in that class and therefore he cannot raise any question as to double taxation. *Heald v. District of Columbia*, 259 U. S. 114. In *Darnell v. Indiana*, 226 U. S. 390, the Court says:

> "The most serious aspect of this objection is that the statutes of Indiana do not make allowance if a

foreign corporation has property taxed within the state. But, as to this, it is enough to say that, however the statutes may be construed in a case of that sort, the plaintiffs in error do not show that it is theirs, and that, if they do not belong to the class for whose sake the constitutional protection would be given, if it did, they cannot complain on that ground."

Conclusion

The decision of the Colorado Supreme Court in this case merely holds that a serviceman's personal tangible property which has not been taxed in any other state, and which has been physically present in the State of Colorado during all of the year 1948, can be taxed for that year by the State of Colorado. This holding construes the pertinent section of the Soldiers' and Sailors' Civil Relief Act as prohibiting multiple taxation and not as providing for an exemption from all taxation. This construction is in accordance with the purpose which is stated by the sponsors of the act and a reasonable construction of the meaning of the words used, and no question of multiple taxation arises under the facts of this case. The question of the possiblility of multiple taxation in other cases is therefore a hypothetical question which cannot be decided in this case. Accordingly, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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Appendix

Soldiers' and Sailors' Civil Relief Act of 1940, c. 888. 54 Stat. 1178:

Sec. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcemnt of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

Senate Report No. 959, 78th Cong., 2d Sess.:

The Committee on Military Affairs, to whom was referred the bill, H. R. 4733, to amend section 514 of the Soldiers' and Sailors' Civil Relief Act, having considered the same, submit the following report thereon, with the recommendation that it do pass.

The purpose of the proposed legislation is to clarify the intent of section 514 of the Soldiers' and Sailors' Civil Relief Act as added by section 17 of the act of October 6, 1942 (56 Stat. 769, 777). When that pro-

vision of law was added to the act to relieve persons in service from liability of double taxation by being moved from one State to another under orders, it was intended that it should apply to personal-property taxes as well as to income taxes. As presently constituted, it primarily affects taxes in respect to income and other taxes based on residence or domicile, but it does not prevent the State of "temporary residence" from taxing tangible personal property actually located in such State so long as the tax does not depend on residence or domicile. A few States have taken the position that tangible personal property of military personnel who are only temporarily within their jurisdiction does not acquire a situs for taxation, but it has been held that section 514 of act as now written does not affect the right of a State to assess personal-property taxes on property within its jurisdiction. The result has been that servicemen find themselvs at times subject to personal-property taxes on the same property in more than one State during the same calendar year by reason of being moved under orders.

Your committee considers that the existing law pertaining to State taxation of the personal property of persons in military service present in the various States in compliance with military orders should be clarified; that the military personnel concerned should not be subjected to multiple taxation of personal property by the various States and should be given the same protection as to personal property taxes as is now provided in respect of income taxes.

rado; and during all of the year 1948, the petitioner lived in a privately owned apartment in the City and County of Denver. The respondent levied a tax amounting to $23.51 upon the tangible personal property (household furniture and furnishings) owned exclusively by the petitioner and possessed and maintained by him at his apartment in the City and County of Denver during the whole of the year 1948. The petitioner paid the tax under protest (R. 5) and brought suit to recover the tax (R. 4-5). The trial court entered judgment in favor of the petitioner (R. 8), and the Supreme Court of Colorado by a unanimous decision reversed the trial court upon the reasoning that the purpose of the Soldier's and Sailor's Civil Relief Act was to prevent multiple taxation rather than to grant an exemption from all taxation; and that since the State of Louisiana had not taxed the tangible personal property which had its actual physical situs in Colorado, the State of Colorado could levy a tax on such property (R. 12-16).

REASONS FOR DENYING THE WRIT

We will answer the reasons given by the petitioner for the granting of the writ of certiorari in the same order that they are set forth in the petitioner's brief. The first contention of the petitioner is that the pertinent part of the Soldiers' and Sailors' Civil Relief Act, Section 514, in clear and unambiguous language, provides that no state other than the state of domicile shall impose a tax upon the personal property of a person in military service. This construction makes the statute an exemption statute rather than a statute to prevent multiple taxation, and the fact that the Supreme Court of the State of Colorado, by a

unanimous decision, has held contrary to the petitioner's contention, shows that the language of the statute is either ambiguous or that it clearly states the law as being contrary to the petitioner's contention. If the statute is not clear and unambiguous, then the court in construing the statute should consider the intention of Congress as evidenced, (1) by the legislative history; the circumstances existing at the time the statute was passed and the evil sought to be corrected or prevented[1]; the Committee Reports and the reports of the sponsors; and (2) by construing the meaning of the words to effectuate the intent of the lawmakers, such meaning to be arrived at not only by a consideration of the words themselves, but by considering the purposes of the law.[2]

1. LEGISLATIVE HISTORY

The Soldiers' and Sailors' Civil Relief Act of 1940 specifically stated that its purpose was to *suspend enforcement of civil liabilities*, in certain cases, of persons in the military service of the Unites States in order to enable such persons to devote their energy to the defense needs of the nation, and to this end the following provisions are made for the *temporary suspension* of legal proceedings and transactions which may prejudice the civil rights of persons in such service. ***." (Italics supplied. c. 888, §100, 54 Stat. 1178, appendix, *infra*, p. 16).

As so adopted in 1940, the act provided that the collection of income taxes should be deferred for not more than six months after termination of military service where ability

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[1] *United States v. Champlin Refining Company*, 341 U. S. 290.
[2] *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U. S. 384.
[3] *Vermilya-Brown, Company, Inc., v. John Joseph Connell*, 335 U. S. 377.

to pay was materially impaired by reason of such service. c 888, §513, 54 Stat. 1190. The said act also provided that n sale of property to enforce the collection of taxes should b made except upon leave of Court and that the person i military service should have the right to redeem within si months after termination of service. c. 888, §500, 54 St 1186.

In 1942 the section of the act which is pertinent to this case was added, and later amended in 1944. As added in 1942 the section, omitting the portion in brackets, read as follows:

"(1) For the purposes of taxation in respect of any person, or of his [personal] property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the [personal property,] income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be

deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, [and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.] This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [October 6, 1942.]

[(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia, of which the person is a resident or in which he is domiciled has been paid.] c. 581, §17, 56 Stat. 777.

The purpose of adding this section 17 in 1942 was stated in House Report No. 2198, 77th Cong., 2d Sess., as follows:

"'Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions

through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxation in several states within the same current year."

The said section 514 of the Soldiers' and Sailors' Civil Relief Act was amended in 1944 by adding the portions set forth in brackets in the foregoing quotation of the 1942 amendment. c. 397, §1, 58 Stat. 722.

The purpose of this 1944 amendment was stated in Senate Report No. 959, 78th Cong., 2d Sess., pp. 1-2, (appendix, *infra*, p. 16) to be to "relieve persons in service from liability of double taxation" and so "that the military personnel concerned should not be subjected to multiple taxation of personal property by the various states and should be given the same protection as to personal property taxes as is now provided in respect of income taxes."

Likewise, it was stated in the report of the House Military Affairs Committee that the purpose of this 1944 amendment was to "relieve persons in the service from liability of double taxation by being moved from one state to another under orders." (Appendix *infra*, p. 18).

It will thus be seen that the purpose of the 1940 act was to *suspend enforcement of civil liabilities;* that the 1942 amendment was designed to *prevent multiple state taxation;* and that the 1944 amendment was adopted to *prevent multiple taxation* and to give the serviceman the *same protection as to personal property taxes as is provided in respect of income taxes.* Nowhere does it appear that Congress was

intending to *exempt* the serviceman from personal property taxes or to provide that he could escape all taxation by moving his personal property out of the state of his domicile. The act does not so state. If such had been the intention of Congress, it would have been easy to have stated specifically that personal property should not be subject to taxation in any state except the state of domicile.

After making this same general finding as to the purpose of the act, the Colorado Supreme Court made this statement:

> "It is to be observed that giving to servicemen the same protection respecting personal property taxes as is given in the case of income taxes in no wise operates as an *exemption* from taxation—the protection hitherto afforded servicemen in respect to income taxes having the purpose of preventing their being subject to income taxes in more than one state of the Union during the same period of time. We believe it is significant that neither in the act itself, nor in the reports of the Congressional committees leading up to the enactment of the amendment, is there any reference to granting exemption from taxation." (R. 16).

It also should be noted that section 2 of this act, which was added in its entirety by the 1944 amendment (*supra* p. 5), stated that the term personal property should include motor vehicles and that the term taxation should include licenses and fees thereon, "provided that the license, fee, or excise required by the state * * * of which the person is a resident or in which he is domiciled has been paid." The wording of this section clearly shows that Congress was trying to prevent mutiple taxation.

If Congress had intended to give an exemption from taxation it would have exempted the personal property of a serviceman from all taxation in his state of domicile as well as in the state where he was located by reason of such service. The liability for taxes in the state of domicile would be just as worrisome to a serviceman as the liability for taxes in the state of temporary location, even though in both the serviceman might be entitled to a stay of the sale for taxes or an additional period of redemption after discharge, and if Congress had desired to give an exemption from taxation in the state of temporary location, where no tax was or could be levied by the state of domicile, it seems reasonable to think that they would have also exempted personal property from taxation in the state of domicile. It is therefore reasonable to say that they were attempting to do what was stated by all of the sponsors, i. e., to prevent multiple taxation.

2. Construing the Meaning of the Words Used.

Not only do the congressional reports show that the purpose of the act was to prevent multiple taxation rather than to grant exemption from taxation, but the wording of the act itself shows that the purpose was to prevent multiple taxation. The act provides that "for the purposes of taxation in respect to any person; or his personal property * * * by any State * * * such person shall not be *deemed* to have lost a residence or domicile in any state * * * *soley* by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in * * * any other state * * * while; and *solely* by reason of being, so absent. * * * For the purposes of taxation in respect of the personal property * * * of any such person by any state * * * of which such person is not a resident or

in which he is not domiciled * * * personal property shall not be *deemed* to be located or present in or to have a situs for taxation in such state * * *."

A statute ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant. *James v. Dubois*, 1 Harr. (N.J.) 285; *Hutchen v. Niblo*, 4 Blackf. 148; Opinion of the Justices, 22 Pick. 571; *United States v. Worner*, 4 McL. 463; *McHay v. Detroit and Erin Plank R.*, 2 Mich. 138; *United States v. Ragsdale*, 1 Hemp. 497; *Coffin v. Rich*, 45 Me. 507, 1 Mass. 324.

Why did Congress use the word "deem?" This Court has said that it is proper to construe the meaning of words to effectuate the intent, such meaning to be arrived at not only by consideration of the words themselves but by considering the purposes of the law. *Vermilya-Brown Company, Inc. v. John Joseph Connell*, 335 U. S. 377.

It is well settled that the situs of tangible personal property for purposes of taxation is the place where the tangible personal property is located, and that the state of domicile cannot tax such property when it is located in another state.[4] In the case of intangible property the maxim *mobilia sequuntur personam* is applied where intangible property is incapable of acquiring a situs separate from the domicile of the owner. However, the maxim has never been applied so as to prevent a state from taxing property having an actual situs in that state nor to permit the state of domicile to tax tangible personal property which has acquired an actual situs elsewhere.

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[4] *Union Refrig. Transit Co. v. Kentucky*, 190 U. S. 194; *Frick v. Pennsylvania*, 268 U. S. 473; *Curry v. McCanless*, 307 U. S. 357.

"The maxima 'mobilia sequuntur personam' has never been allowed to stand in the way of the power of a state to tax property having an actual permanent situs within its jurisdiction; and it has always been held, assumed, or conceded that tangible personal property having an actual situs in a state, is there taxable, regardless of the foreign domicile of its owner, the theory being that inasmuch as the property enjoys the protection of the state, it must be made to contribute to its maintenance." 110 A. L. R. 715.

"It is generally agreed that the maxim, 'mobilia sequuntur personam,' is a fiction adopted for purposes of convenience in fields other than the taxation of the owner's property, and while it is still applicable in the field of taxation where it does not contravene fact, as where because of the intangible character of the property it is incapable of acquiring a situs separate from the domicile of the owner, it is inapplicable where, contrary to the principle it establishes, the property has acquired an actual situs in a jurisdiction other than the domicile of the owner.

"Consequently, notwithstanding the maxim, the power to tax tangible personal property which has acquired an actual permanent situs elsewhere has been denied to the domicil of the owner, as a matter either of constitutional law or of statutory construction; the general theory being that in such a case the domicile does not give protection, which is the consideration for the tax. *Union Refrigerator Transit Co. v. Kentucky* (1905) 199 U. S. 194 * * *." 110 A. L. R. 709.

The word "deem" was no doubt used to prevent the use of this legal fiction of *mobilia sequuntur personam*. This word first appeared in the amendment of 1942 concerning the taxation of income, an intangible, and Congress no doubt meant that the doctrine of *mobilia sequuntur personam* should not be used so as to permit the double taxation of a serviceman's income. The amendment of 1944 used the same wording. Where the same word appears more than once in a statute, it is certainly reasonable to assume that Congress meant the word to have the same meaning. It also should be noted that the word "solely" is used in the act. The person shall not be deemed to have lost a residence or domicile *solely* by reason of being absent therefrom, or to have acquired a residence or domicile in another state, while, and *solely* by reason of being so absent.

The Colorado Supreme Court held that the word "deemed" meant presumed. This is the usual meaning given to the word by courts, some cases holding that it means a rebuttable presumption,[5] and others holding that it means a conclusive presumption.[6] Whether the presumption is rebuttable or conclusive is not important in this case because the word is used in the negative as "shall not be deemed" and also because of the word "solely" appearing later in the same sentence.

In *Zimmerman v. Zimmerman*, 175 Ore. 585, 155 Pac. (2d) 293, the court said:

> "We think it clear from the authorities above cited that the various constitutional provisions which state that no soldier shall be *deemed to have acquired a*

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[5] *Erickson v. Erickson*, 167 Ore. 1, 115 Pac. (2d) 152; *Williamson v. Winningham*, 199 Okla. 393, 186 Pac. (2d) 644.

[6] *Waldron v. People*, 84 Colo. 1; *Harder v. Irwin*, 288 Fed. 402; *United States v. Davis*, 50 Fed. (2d) 903.

residence in the state *in consequence of* or *by reason of* having been stationed within the same should be construed as if the word 'merely' were inserted immediately before the words "in consequence of' and that such constitutional provisions do not prevent the acquisition of domicil by a soldier under the rules of the common law as set forth in the Restatement of Conflict of Laws."

In the present case there is no need to supply a modifying adverb because of the phrase "solely by reason of being absent therefrom." "Solely" means without another; singly; alone. To say that for the purpose of taxation a person's property shall not be "deemed" to be located in a state of non-residence "solely" because the owner of the property is in that state, implies that the presence of the owner, together with other facts which gave tangible personal property a legal situs for taxation, would justify the imposition of such a tax. That is the present case.

3. Liberal Construction

We do not disagree with the petitioner's statement that "exemptions from taxation expressly established by Congress for federal agencies and instrumentalities will not be whittled away by the courts." However, that statement is based upon the false premise that in this case an exemption has been expressly established by this act of congress. Nor do we disagree with the general statements that this court has said that the Soldiers' and Sailors' Civil Relief Act should be read with friendly eyes and liberally construed to protect the man in military service. However, this Court has also said, in construing this Soldiers' and Sailors' Civil Relief Act, that "the judicial function to be

exercised in construing a statute is limited to ascertaining the intention of the legislature therein expressed. A *casus omissus* does not justify judicial legislation." *Ebert v. Poston*, 266 U. S. 548. The petitioner is asking the Court to construe the act so as to supply an exemption which is not stated in the act. He is asking the Court to construe the act so as to establish an exemption by judicial leglislation when the intention of the legislature was to prevent multiple taxation.

It is also a familiar rule of construction that since the taxing power is necessary to the state, acts limiting such power must be narrowly construed. *Christ Church v. Philadelphia*, 24 How. 300, 16 L. ed. 602; *Wiggins Ferry Co. v. City of East St. Louis*, 107 U. S. 365.

In *Bank of Commerce v. Tennessee*, 104 U. S. 493, the following statement appears:

> "That statutes imposing restrictions upon the taxing power of a State, except so far as they tend to secure uniformity and equality of assessment, are to be strictly construed, is a familiar rule. Against the power nothing is to be taken by inference and presumption. Where a doubt arises as to the existence of the restriction, it is to be decided in favor of the State."

4. Constitutionality

Since the Colorado Supreme Court construed this section of the act as it did, the question of the constitutionality of the act was not necessary to the decision, and the Court therefore declined to consider it. We will therefore not argue that point in this brief on certiorari but will

As so adopted in 1940, the act provided that the collection of income taxes should be deferred for not more than six months after termination of military service where ability to pay was materially impaired by reason of such service. c. 888, §513, 54 Stat. 1190. The said act also provided that no sale of property to enforce the collection of taxes should be made except upon leave of Court and that the person in military service should have the right to redeem within six months after termination of service. c. 888, §500, 54 Stat. 1186.

In 1942 the section of the act which is pertinent to this case was added, and later amended in 1944. As added in 1942 the section, omitting the portion in brackets, read as follows:

> "(1) For the purposes of taxation in respect of any person, or of his [personal] property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purpose of taxation in respect of the [personal property,] income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, [and personal property shall not be deemed to be located or present in

or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction.] This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to [October 6, 1942.].

["(2) When used in this section, (a) the term 'personal property' shall include tangible and intangible property (including motor vehicles), and (b) the term 'taxation' shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia, of which the person is a resident or in which he is domiciled has been paid.] c. 581, §17, 56 Stat. 777.

The purpose of adding this section 17 in 1942 was stated in House Report No. 2198, 77th Cong., 2d Sess., as follows:

"Section 17 is designed to prevent multiple State taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own. Under present State laws the personal property and income of such persons may become liable for taxation in several states within the same current year."

The said section 514 of the Soldiers' and Sailors' Civil Relief Act was amended in 1944 by adding the portions set forth in brackets in the foregoing quotation of the 1942 amendment. c. 397, §1, 58 Stat. 722.

The purpose of this 1944 amendment was stated in Senate Report No. 959, 78th Cong., 2d Sess., pp. 1-2, (ap-

Report of House Military Affairs Committee (1944):

When the Soldiers' and Sailors' Civil Relief Act of 1940 was amended by the act of October 6, 1942, a provision was written into the act to relieve persons in the service from liability of double taxation by being moved from one State to another under orders. It was intended that this should apply to personal property taxes as well as to income taxes. However, it has been held that under the wording of such amendment personal property taxes were not included. The result has been that servicemen find themselves at times subjected to personal property taxes in more than one State by reason of being moved under orders.

The purpose of the present act is to correct this situation and to give to the servicemen the same protection as to personal property taxes that they now have as to income taxes.